HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 8391 of 2007

Between:

K.V.S.R. Ravi Kumar

… Petitioner

And

Municipal Corporation of Eluru,
Rep. by its Commissioner, Eluru & another

… Respondents

:: O R D E R ::

Counsel for the petitioner : Shri P. Venu Gopal for
Shri T.C.D. Sekhar

Counsel for respondent No.1 : Shri S. Nageswara Reddy

Counsel for respondent No.2 : Shri B. Mahender Reddy

June 29, 2007

Per G.S. Singhvi, CJ

In this petition, the petitioner has prayed for quashing notice dated 16.04.2007 issued by Commissioner, Municipal Corporation of Eluru (hereinafter referred to as 'the Commissioner') for removal of the alleged illegal construction made by him in door bearing No.4-12-16,

Jangala Koteswara Rao Street, Agraharam, Eluru.

A perusal of the record shows that one Shri Y. Bhaskara Sastry, who has property on the southern side of the building constructed by the petitioner, filed a suit for mandatory injunction (O.S.No.321 of 2005) in the Court of Additional Senior Civil Judge, Eluru for demolition of the alleged illegal construction made by the petitioner. Respondent No.2, who has property on the western side of the petitioner's building, filed Writ Petition No.5433 of 2006 for similar relief. The same was disposed of by the learned Single Judge by directing the Commissioner to take action in accordance with law after issuing notice to non-petitioner No.2 (the petitioner herein). After sometime, respondent No.2 filed Contempt Case No.958 of 2006. On 18.4.2007, the learned Single Judge passed the following order:

> "The first respondent appeared before this Court and submits that pursuant to the orders of this Court dated: 21.03.2006 in W.P.No.5433 of 2006 wherein it was directed to dispose of the representation of the petitioner dated: 15.02.2006 with regard to illegal constructions made by the second respondent in respect of the building bearing No.4-12-16 of Jangala Koteswara Rao Street, Agraharam, Eluru without leaving any set backs on the rear and other two sides, as required under the building rules and byelaws of the Corporation and the said construction is contrary to the sanctioned plan and affecting air, light, privacy of the petitioner and causing congestion to the neighbours.
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> A counter has been filed stating that, in fact, even before the representation was made by the petitioner, the Municipal Commissioner issued notice dated:29.08.2005 to the second respondent under Sections 452, 456 r/w.636 of H.M.C. Act for the deviation in the constructions as per the approved plan and after receipt of the orders of this Court, he has issued an endorsement dated:16.04.2006 stating that the suit is pending and therefore no further action can be taken.
>
> I am of the opinion that the said action prima facie is illegal and contrary to the provisions of the Municipal Corporation Act, as there is no stay from the Civil Court or from any other concerned. Therefore, it is the duty of the Commissioner to take appropriate action pursuant to the notice issued by him on 29.08.2005. But, the action of the first respondent appears that he is desisting from taking any action.
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> However, so as to enable the first respondent to take appropriate action, the matter is adjourned for a period of three

weeks."

The main grievance of the petitioner is that the Commissioner has taken action against him under the Hyderabad Municipal Corporation Act, 1955 (for short, 'the 1955 Act') (this should be read with the provisions contained in the Andhra Pradesh Municipal Corporation Act, 1994) at the behest of respondent No.2 and feeling threatened by the contempt proceedings initiated by him in the form of Contempt Case No.958 of 2006.

We have heard learned counsel for the parties. In our opinion, it is not necessary to go into the legality of the action initiated by the Commissioner under Sections 452, 461 and 636 of the 1955 Act because we feel that ends of justice will be met by directing that notice dated 16.04.2007 be treated as the one issued only under Section 452(2) of the 1955 Act with liberty to the petitioner to file his reply with a further direction to the Commissioner to dispose of the same by recording reasons.

Hence, the writ petition is disposed of in the following terms:

(1) The petitioner shall submit his reply to notice dated 16.04.2007 by treating the same as the one issued under Section 452(2) of the 1955 Act.

(2) Within next two months, the Commissioner shall pass appropriate order assigning reasons in support of his conclusion.

(3) If the Commissioner comes to the conclusion that the construction made by the petitioner is in violation of the sanctioned plan, master plan, zoning plan, building byelaws or any other statutory provision, then he shall be free to pass consequential order for removal of the deviations and give seven days' time to the petitioner to voluntarily remove the deviations/illegal construction.

(4) If the petitioner fails to remove the violations, then the Commissioner shall take further action in accordance with law.

(5) If the petitioner challenges the order of the Commissioner by filing appeal or civil suit, then the Appellate Authority and/or the civil Court shall not pass any order of injunction without hearing the representative/advocate of the Municipal Corporation, respondent No.2 as also Shri Y. Bhaskara Sastry, who has filed civil suit in the Court of Additional Senior Civil Judge, Eluru.

As a sequel to disposal of the main petition, W.P.M.P.No.10769 of 2007 filed by the petitioner for interim relief is dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

29.06.2007
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